

HELPING PRO SE PETITIONERS NAVIGATE THE APPEALS PROCESS

Certified Public Manager Program Project

Class of 2014

Renee H Johnson

South Carolina Department of Health and Human Services

March 4, 2014

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BACKGROUND

South Carolina Department of Health and Human Services (SCDHHS) is the state agency responsible for determining Medicaid eligibility and paying provider claims for services provided to Medicaid beneficiaries. Title 42 of the Code of Federal Regulations, §431.200 states that the Medicaid "...State plan provide an opportunity for a fair hearing to any person whose claim for assistance is denied or not acted upon promptly; (b) Prescribes procedures for an opportunity for a hearing if the State agency or PAHP takes action, as stated in this subpart, to suspend, terminate, or reduce services, or an MCO or PIHP takes action under subpart F of part 438 of this chapter; and (c) Implements sections 1919(f)(3) and 1919(e)(7)(F) of the Act by providing an appeals process for any person who--(1) Is subject to a proposed transfer or discharge from a nursing facility; or (2) Is adversely affected by the pre-admission screening or the annual resident review that are required by section 1919(e)(7) of the Act." Simply stated, this regulation means anytime an action is taken to stop, deny, reduce or delay a person's Medicaid benefits, the person has the right to appeal.

SCDHHS has met this requirement of the regulation by forming the Division of Appeals and Hearings. The Hearing Officers that comprise the Division of Appeals and Hearings act as neutral parties and determine if the correct action was taken based on the evidence provided. Based on a report found on <http://www.schealthviz.sc.edu>, there were approximately 1.1 million Medicaid beneficiaries in FY 2013. From the Division of Appeals and Hearings' case management system I verified that over 1,000 appeal requests were received in 2013.

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PROBLEM STATEMENT

Most appeal requests are filed by Medicaid applicants/beneficiaries who are not familiar with the appeal process and do not know what evidence is needed in order to properly argue their case. This can lead to many unnecessary appeal requests and insufficient arguments. Frequently when the appellant does not offer enough evidence to make a thorough decision, the Hearing Officer will help assist the appellant but this can give the impression of bias. The Hearing Officer is forced to tread a thin line between providing the help necessary to ensure due process and advocacy.

Recently, two of the SCDHHS Division of Appeals and Hearings Hearing Officers attended the National Judicial College in Reno, Nevada. During their studies, several of the faculty stressed that every court, board, or agency that hears appeals for self-represented or *pro se* appellants should have information available online to answer basic questions and contact information for more in depth questions. The SCDHHS Division of Appeals and Hearings did not have any such information available. The SCDHHS public website (www.scdhhs.gov) has links to all of the policy manuals and the Medicaid state plan, but it is not user friendly and is difficult to understand even by experienced people.

DATA COLLECTION

I met with my fellow Hearing Officers and we discussed the most frequent problems we have encountered. We also discussed the conversations we've had with hearing officers at the National Association of Hearing Officers (NAHO) conference and the National Judicial College.

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It appears that the hearing officers from different agencies and states encounter the same types of problems we encounter. While the details may differ slightly, the core problem is the same, lack of appellant knowledge of the appeal process and policy.

I searched the internet for "Medicaid appeal" and Google listed almost 5 million matches for this search. I found that many states' Medicaid agencies had appeal information available online. I also found appeal information located on advocate websites. I reviewed approximately 20 websites and gathered information from the most comprehensive and clear websites: the Virginia Department of Medicaid Assistance, North Carolina Office of Administrative Hearings, Indiana Family and Social Service Administration, Protection and Advocacy for People with Disabilities, Inc., and the Kaiser Commission. Of these websites that were structured as questions and answers, I formed a comprehensive list and used this list as a basis for my list of questions and answers.

DATA ANALYSIS

All of the Hearing Officers in the Division of Appeals and Hearings, including myself, met several times to discuss the format of our information as well as the content of the information to be on the website. We decided the best format was to have the information as questions and answers. We chose this format so a person who may have a specific question could read just one question and answer but a person who didn't understand anything of the process could read all of the information. We then analyzed each question and answer from the external websites carefully and modified as necessary. We removed several questions that did

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not apply to our process or specifically addressed disability hearings and added several new questions and answers that deal with our agency's exact processes. We also added links to helpful websites that will provide the appellants with policy and guidance. I sent the draft list to my Deputy Director and to the Office of Communications for approval. Both my Deputy Director and the Office of Communications provided many comments. After I made all of the recommended changes, the list was finalized and ready to be moved to the SCDHHS website.

IMPLEMENTATION PLAN

The final list was sent to the agency's Bureau of Information Technology Services (BITS) to be published to the public SCDHHS website. It can be found at <https://www.scdhhs.gov/site-page/appeals-and-hearings-frequently-asked-questions> and can also be found as an attachment on page 6.

I would like to take four future actions:

1. Have an independent Appeals and Hearings FAQs tab on the agency's website. I will need to work with BITS staff to ensure this happens. There should be no monetary cost associated with this action;
2. Once the FAQs are on an independent tab, I would like to add the website address added to all Appeals and Hearings cover letters. This should not be difficult because it is an internal process and we all would like the Appellants to be aware of this information. There should be no monetary cost associated with this action;

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3. Work with eligibility staff to have the website added to the eligibility notice. This will be much more difficult. The agency is currently working on a new eligibility system. The implementation of this new system has already been delayed. There should be no monetary cost associated with this action;
4. Conduct training sessions with eligibility and call center staff so they can provide better information when they speak to potential appellants. I will need to contact the directors of the areas to schedule the trainings and develop the educational material. The training could be help via webinar. There should be no monetary cost associated with this action;

EVALUATION METHOD

After the material was moved to the website, I searched the internet to determine how easily it could be found. The search results consisted of outdated information on the SCDHHS and websites not directly associated with Medicaid determination. I asked the BITS webmaster to have this corrected. It has since corrected so the historic page points to the new page.

SUMMARY AND RECOMMENDATIONS

I am very happy to have been able to publish this material to the agency's website. My hope is that it will provide appellants with additional information needed to determine if an appeal is necessary thereby reducing the number of unnecessary appeals and will produce

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more prepared *pro se* appellants thereby preventing the need of the Hearing Officer to assist the appellant and appear biased.

ATTACHMENTS

ATTACHMENT 1

APPEALS AND HEARINGS FREQUENTLY ASKED QUESTIONS*	
*These frequently asked questions and answers are for informational purposes and should not be used as legal advice or interpretation. For legal advice, please consult an attorney.	
QUESTION	ANSWER
What Is an Appeal?	An appeal is a request for a fair hearing before an impartial decision-maker (hearing officer) of the Division of Appeals and Hearings. The hearing officer will decide whether the action proposed or taken by the South Carolina Department of Health and Human Services is correct and fair.
What Is a Fair Hearing?	A fair hearing is a court-like procedure conducted by a hearing officer of the Division of Appeals and Hearings. The hearing officer listens to your explanation of why you do not agree with the action taken by the South Carolina Department of Health and Human Services. The hearing officer will also listen to the South Carolina Department of Health and Human Services' explanation of the action taken on your case. Both sides can ask questions of any witnesses. The hearing officer will ask questions to get enough information to decide if your case was handled correctly, based on the current regulations and policies. (See Regulations and Policy Links)
When Can I Ask for an Appeal?	You can ask for an appeal when the South Carolina Department of Health and Human Services has done (or proposes to do) any of the following: <ul style="list-style-type: none">• Reduce your benefits or services• Terminate your benefits or services• Deny your request for benefits or services• Deny your request for prior authorization of a service• Deny your request for increased services• Does not respond to your request for increased services• Determines there has been an overpayment• If you believe that the level of your benefits or services is not correct• If you feel a decision has not been made in a timely manner.

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Will I Get Notice of My Right to Appeal?	You should receive a notice when the South Carolina Department of Health and Human Services takes an action. This notice contains your appeal rights and tells you how to file your appeal.
What Will the Notice Say?	The notice must have the following information: (1) A statement of the proposed action (2) The reason for the proposed action (3) The regulation or policy that supports the action (see Regulations and Policy Links) (4) An explanation of your right to a fair hearing (5) An explanation of how you can continue to receive benefits during the appeal process (See Can I Keep My Benefits or Services While I Wait for a Decision?).
Where Do I Find the Policy in the Notice?	You can call the South Carolina Department of Health and Human Services at 1-888-549-0820 for a copy of the policy or see Regulation and Policy Links.
How Do I Ask for an Appeal?	You can call the South Carolina Department of Health and Human Services at 1-888-549-0820 and state that you want to appeal a decision or you can appeal directly to the Division of Appeals and Hearings by submitting a copy of the notice about the action and a completed appeals form (add appeals form and link to https://www.scdhhs.gov/forms-and-applications) or a letter (See What Should I Include in My Letter Asking for an Appeal?) to: Division of Appeals and Hearings PO Box 8206 Columbia, SC 29201-8206 Fax: (803) 255-8206 Phone: (803) 898-2600 or toll free at 1-800-763-9807
Who Can I Ask for Help if I Need Assistance to File an Appeal?	You can call the South Carolina Department of Health and Human Services at 1-888-549-0820. State what type of assistance you need such as an interpreter, assistance completing the forms, or an explanation of the decision.
What Should I Include in My Letter Asking for an Appeal?	<ul style="list-style-type: none"> • Start by saying you are asking for an appeal. • Ask for any assistance or special arrangements you may need for the hearing, such as an interpreter, change in location due to health reasons, or wheelchair accessibility. • State what services were denied, reduced, delayed, or stopped. • Explain why you think the denial, reduction, delay, or stop of your benefits was incorrect. • List every issue that you want the hearing officer to consider. • Explain why you disagree with the South Carolina Department of Health and Human Services, such as your services are medically necessary, you are eligible for benefits, or you meet a level of care. • If you want to keep services during the appeal, ask for them to continue. You must ask to keep your services within 10 calendar

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	<p>days from the date on the notice. (See Can I Keep My Benefits or Services While I Wait for the Decision?)</p> <ul style="list-style-type: none"> • Include a copy of the letter from the South Carolina Department of Health and Human Services that informed you that your benefits were denied, reduced, delayed, or stopped. Keep the original letter for your records. • If you want your hearing to be held as soon as possible. • Send copies of any documents that support your reason for the appeal.
How Long Do I Have to Appeal a Decision?	<p>You must send your request for an appeal so that the South Carolina Department of Health and Human Services or the Division of Appeals and Hearings receives your appeal within 30 calendar days beginning on the day after the notice was mailed. If the day falls on a Saturday or Sunday, or a state or federal legal holiday, the time period extends to include the next workday. If you did not receive notice of appeal rights, you must request the appeal within 30 days of learning that you have appeal rights.</p>
Can I File a New Application or Request for Service if My Benefits Have Been Stopped or Denied and I Filed an Appeal?	<p>Yes. You may always file a new application or request for service pending an appeal decision. The appeal protects any retroactive benefits you would be eligible to receive.</p>
Can Someone Ask for an Appeal for Me?	<p>Yes. This person would be your representative for the appeal. You can be represented by anyone you choose, including an attorney.</p>
Does My Representative Have to Be an Attorney?	<p>No. You can represent yourself or be represented by anyone you choose. If you would like to find an attorney to represent you, the South Carolina Bar or South Carolina Legal Services may be able to help.</p> <p>Contact the South Carolina Bar at www.scbar.org/PublicServices/FindaLawyer or call 803-799-7100 in Richland and Lexington Counties or toll free at 1-800-868-2284. Contact South Carolina Legal Services at www.sclegal.org or call 1-888-346-5592.</p> <p>You must notify the hearing officer before the hearing if an attorney is going to represent you.</p>
How Do I Contact the Division of Appeals and Hearings or My Hearing Officer?	<p>You can contact the Division of Appeals and Hearings by calling 1-803-898-2600 or 1-800-763-9807. You should contact the Division of Appeals and Hearings if you have any procedural questions about your appeal or hearing, need to reschedule your hearing, ask for an extension, or to withdraw your appeal. The hearing officer cannot discuss the facts of your case without a representative from the</p>

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	<p>South Carolina Department of Health and Human Services being present. This means that the hearing officer cannot communicate with you in person, on the phone, or by email unless a representative from South Carolina Department of Health and Human Services also participates in the conversation.</p>
<p>Can the Division of Appeals and Hearings Deny My Request for a Hearing?</p>	<p>Yes. A hearing request can be denied for any of the following reasons:</p> <ul style="list-style-type: none"> • You did not ask for a hearing in a timely manner unless you have "good cause" for not appealing in time (See What Is "Good Cause"?) • The issue is not ready for a hearing • Your appeal is due to a change in state or federal law or local agency policy (unless the appeal is due to the mishandling of the change to your individual circumstance) <p>If your request for a hearing is denied, you or your representative will be given a written decision. You also have the right to appeal this decision to the Administrative Law Court (See For More Information About Appealing to the Administrative Law Court)</p>
<p>Can I Keep My Benefits or Services While I Wait for the Decision?</p>	<p>Yes, if you send in your appeal request within 10 days of the notice date and you request that your benefits continue.</p> <p>If the South Carolina Department of Health and Human Services reduces or terminates your benefits without mailing you prior notice but your appeal request is received within 10 days of the notice, your benefits may be restored to the previous level.</p> <p>If you send in your appeal request late, you still may be able to continue receiving your benefits. If the South Carolina Department of Health and Human Services receives your appeal request more than 10 days of the notice and "good cause" is shown for the delay, your benefits may be returned to the previous level. (See What is "Good Cause"?)</p> <p>If you withdraw or abandon your appeal, or the hearing officer states that the issue is not ready for hearing, you will no longer continue to receive benefits.</p> <p>If you continue to receive benefits during the appeal and you lose or withdraw your appeal or your appeal is not ripe for hearing, you may have to pay back any benefits that you were not eligible to receive.</p>
<p>What is "Good Cause"?</p>	<p>"Good cause" is a good reason, which can be proven, for not appealing the decision timely, not requesting continued benefits timely, or not attending your hearing.</p> <p>Examples of "good cause" include:</p> <ul style="list-style-type: none"> • Death in the immediate family • Sudden illness or injury of you or a member of your immediate family • Other circumstances or good reasons that reasonably prevented

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	you from taking the required action
What is an Interlocutory Order?	An Interlocutory Order is a document sent to you and/or the South Carolina Department of Health and Human Services requesting additional action(s) or information. The Interlocutory Order could ask you for additional information about your appeal or to participate in a pre hearing conference. You must respond to the Interlocutory Order by the date given. If you do not respond by the date given, your appeal request may be dismissed. If you do respond to the Interlocutory Order, the hearing officer will take the next appropriate step.
Who Can I Discuss My Appeal with Before the Hearing?	<p>You may contact the South Carolina Department of Health and Human Services before the hearing date to review your appeal and discuss the issue you are appealing, share documents, and work toward a resolution. Some appeals are scheduled for pre hearing conferences. The best way to prepare for your hearing is to speak to the South Carolina Department of Health and Human Services representative.</p> <p>You cannot discuss the facts in your appeal with the hearing officer unless a South Carolina Department of Health and Human Services representative is also present, either in person, on the phone or included on the email. You can discuss procedural issues with the hearing officer (for example, the hearing date and time, driving directions, parking instructions, etc.) without a representative from the South Carolina Department of Health and Human Services being present. You can discuss your appeal with anyone of your choice other than the hearing officer.</p>
When Will My Hearing be Held?	If a hearing is granted, the Division of Appeals and Hearings will mail you a Notice of Hearing giving the time, date, and place of the hearing. This notice will be mailed at least 30 days before the hearing. You may ask the hearing officer for your hearing to be held sooner. (See What Should I Include in My Letter Asking for an Appeal?)
Can I Get an Interpreter for My Hearing?	Yes. If you or your representative has trouble understanding English, or if you communicate using sign language, the Division of Appeals and Hearings must provide an interpreter at your request. (See What Should I Include in My Letter Asking for an Appeal?)
Where Will My Hearing be Held?	Hearings are usually held in Columbia. If you are not able to go to Columbia, you can ask for the hearing to be held at another South Carolina Department of Health and Human Services office closer to you and to the other people involved. You can state this on your hearing request, or you can contact the hearing officer. The hearing officer may ask for the reason you wish to have the hearing moved to another location. The hearing officer will decide whether the hearing

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	location will be moved. (See What Should I Include in My Letter Asking for an Appeal?)
Can I Ask for a Telephone Hearing?	No. The Division of Appeals and Hearings does not conduct telephone hearings.
Who Will Be at My Hearing?	<p>The hearing will include the following people:</p> <ul style="list-style-type: none">• Hearing officer• South Carolina Department of Health and Human Services representative(s)• You and/or your representative <p>Attendance at the hearing may also include the following people:</p> <ul style="list-style-type: none">• Witnesses that you and/or the South Carolina Department of Health and Human Services invite• Legal representation that you and/or the South Carolina Department of Health and Human Services bring. You may bring an attorney to the hearing, and the South Carolina Department of Health and Human Services may bring an attorney to the hearing. (See Does My Representative Have to be an Attorney?)• Other people, only if all parties agree and if their attendance does not interfere with the orderly conduct of the hearing.

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How Do I Prepare for My Hearing?	<ul style="list-style-type: none"> • Prepare a list of all of the documents, photos, or other materials you want the hearing officer to use in making the decision. • Prepare a statement. Write down the important facts of your appeal and why you think the South Carolina Department of Health and Human Services' action is wrong (for example, the income was calculated incorrectly, the services are medically necessary, you meet the other criteria to be eligible). • You will be able to make opening and closing remarks. • Gather evidence that you can give to the hearing officer. (See What Types of Evidence Can I Present at the Hearing?) • Bring the notice that the South Carolina Department of Health and Human Services sent you. If you think the notice left out any of the important information listed above, say so. (See What Will the Notice Say?) • Copy documents that you want the hearing officer to use in his or her decision. Bring copies for the hearing officer, the South Carolina Department of Health and Human Services and yourself. • Find witnesses who can help support your side of the appeal. • Prepare questions you want to ask your witnesses and the South Carolina Department of Health and Human Services' witnesses. • You can give the hearing officer a brief before the hearing. A brief is a written document with the facts, your arguments, and supporting evidence. The South Carolina Department of Health and Human Services may also submit a brief. Even if you do not give the hearing officer a brief, you can still make arguments, call witnesses, and submit documents at the hearing.
What Types of Evidence Can I Present at the Hearing?	<ul style="list-style-type: none"> • Witnesses – someone who can help prove your arguments • Records – These can include any documents that show you meet the eligibility criteria such as income records, property records, medical records, or school records • Documents – These can include items such as income tax documents, bank statements, or a letter from your doctor <p>Submitting Evidence</p> <ul style="list-style-type: none"> • You may submit documents before or at the hearing. If you submit them before the hearing, send a copy to the South Carolina Department of Health and Human Services and the hearing officer. • You are allowed to bring evidence with you to the hearing that you did not submit prior to the hearing. • Make sure that you have 3 copies of any materials that you bring with you to the hearing – a copy for the hearing officer, the South Carolina Department of Health and Human Services, and yourself.
What if I or My	You have abandoned your appeal if you do not attend your hearing

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Representative Do Not Attend the Hearing?	unless you have "good cause" and you want to continue with your appeal. You must contact the hearing officer immediately. The hearing officer will decide whether you had "good cause". (See What is "Good Cause"?) If you do not contact the hearing officer immediately and show "good cause," the hearing will be dismissed and you will lose the appeal. The South Carolina Department of Health and Human Services can then take the action it was planning to take. Finally, if you disagree with the dismissal, the cover letter of the Order of Dismissal will tell you how to ask for an Administrative Law Court appeal. (See For More Information About appealing to the Administrative Law Court)
Will My Hearing Be Recorded?	Yes. The Division of Appeals and Hearings will keep this recording with the appeal record. If you request an Administrative Law Court appeal (See For More Information About Appealing to the Administrative Law Court), the recording will be used to create a transcript.
What Will Happen at the Hearing?	The hearing officer begins by starting the recording equipment and providing introductory information. The hearing officer will state the issue(s) to be heard. Usually, the issue(s) will be whether the South Carolina Department of Health and Human Services' action or inaction was in accordance with applicable regulations or policy. (See Regulations and Policy Links) The hearing officer will record the name and role of each person attending the hearing and give an oath or affirmation to all who are testifying. You and the South Carolina Department of Health and Human Services will both have an opportunity to present an opening statement, present arguments and evidence, and cross-examine each of the other party's witnesses. After all testimony is given, both parties may present a closing statement.
What Happens After My Hearing?	The hearing officer will review the testimony and other evidence presented and issue a decision. You will receive the written decision by certified mail.
If I Disagree with the Hearing Decision (or a Decision Denying or Dismissing my Hearing Request), Can I Appeal?	Yes. You may request an appeal before the Administrative Law Court. The decision cover letter provides you with the instructions to request an Administrative Law Court appeal. Please note: Both sides have the right to appeal to the Administrative Law Court. (See For More Information About Appealing to the Administrative Law Court)
When the Hearing Decision Orders the South Carolina Department of Health and Human	Yes. If the decision is in your favor, the South Carolina Department of Health and Human Services must comply, unless it appeals the decision to the Administrative Law Court (See For More Information About Appealing to the Administrative Law Court). If the South Carolina Department of Health and Human Services fails to comply

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Services to Take Action, is the South Carolina Department of Health and Human Services Responsible for Complying?	with the decision, you should contact the South Carolina Department of Health and Human Services at 1-888-549-0820.
Regulations and Policy Links	<ul style="list-style-type: none">• Code of Federal Regulations: http://www.ecfr.gov/cgi-bin/text-idx?SID=017325392234b99a03981f6dce54fe83&c=ecfr&tpl=/ecfrbrowse/Title42/42cfrv1_02.tpl• South Carolina Code of Regulations: http://www.scstatehouse.gov/coderegs/c126.php• South Carolina Department of Health and Human Services Manuals: https://www.scdhhs.gov/provider-manual-list• State Plan: https://www.scdhhs.gov/site-page/state-plan-under-title-xix-social-security-act-medical-assistance-program• Information about the South Carolina Department of Health and Human Services Medicaid Waiver Programs: https://www.scdhhs.gov/service/waiver-management-field-management• South Carolina Disabilities and Special Needs Manuals: http://www.ddsn.sc.gov/providers/medicaidwaiverservices/Pages/default.aspx• Social Security Policy Operating Manual: https://secure.ssa.gov/apps10/poms.nsf/Home?readform
For More Information About Appealing to the Administrative Law Court	http://www.scalc.net/